

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1063

Introduced by Assembly Member Firebaugh

February 20, 2003

An act to add ~~Section 40447.8 to~~ Sections 40447.8, 40447.8.1, 40447.8.3, and 40447.8.4 to, and to add and repeal Section 40447.8.2 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1063, as amended, Firebaugh. South Coast Air Quality Management District: retrofit controls: *mitigation fees*.

(1) Existing law, the Lewis-Presley Air Quality Management Act, designates the South Coast Air Quality Management District as the sole and exclusive authority within the South Coast Air Basin with the responsibility for comprehensive air pollution control.

This bill would authorize the south coast district, to the extent permissible under federal law, to adopt regulations requiring any motor vehicle, nonroad engine, and nonroad vehicle, as defined, that operates substantially in the south coast district, to install retrofit controls to reduce emissions of air contaminants to the maximum extent feasible, as determined by the south coast district. *The bill would prohibit a regulation applicable to motor vehicles pursuant to this provision from being implemented prior to January 1, 2007. The bill would require the state board to submit a regulation adopted pursuant to this provision to the federal Environmental Protection Agency for a waiver of certain federal provisions.* The bill would also declare the intent of the Legislature that the south coast district board, in adopting those

regulations, to grant priority to reducing emissions of air contaminants from vehicles and engines that contribute to air pollution problems in areas impacted by the Alameda Corridor and the Alameda Corridor East, as determined by the south coast district.

The bill would require the south coast district board, by resolution, to establish fair share emission reduction targets to be met by ships and locomotives operating within the south coast district to assist in attaining federal one-hour ozone, PM10, 8-hour ozone, and PM2.5 standards, and applicable state standards.

The bill would authorize the south coast district board to adopt by regulation a reasonable mitigation fee on or after January 1, 2006, and impose that fee upon ports, marine terminals, shipping companies, and railroads.

The bill would require that the fee be used exclusively to mitigate the emission impacts of the activity or activities for which the fee is imposed, including obtaining equivalent emission reductions from other sources, and mitigating or avoiding emissions from vehicle idling at rail crossings. The bill would require the south coast district board to duly consider federal regulations partially meeting the fair share targets. The bill would prohibit a mitigation fee from being imposed unless the district board makes certain findings, including establishing a clear nexus between the activities for which the fee is charged and the pollution impacts sought to be mitigated and that the fee does not exceed the reasonable costs of mitigating the identified air pollution impacts resulting from operations, including vehicle idling at rail crossings.

The bill would require the south coast district board to adopt a program of projects for the expenditure of the mitigation fees. The bill would also require that for a period of 12 months after receipt, not less than 20% of the fee revenue for each fiscal year be reserved for expenditure on mitigation projects that reduce emissions from heavy-duty vehicles operated by independent truckers, as defined, operating substantially within the south coast district. The bill would require the south coast district to issue an annual public report that sets forth the revenue received as mitigation fees in the prior fiscal year, the actual costs of the projects funded, the results achieved, and how these results compare with the expected costs and benefits.

(2) Existing law makes a violation of any rule, regulation, permit, or order of the district a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program.



(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *Federal and state health-based ambient air quality*
4 *standards for ozone and PM10 are exceeded regularly and by a*
5 *wide margin in the South Coast Air Basin.*

6 (b) *The federal Environmental Protection Agency has recently*
7 *promulgated even more stringent 8-hour ozone and PM2.5*
8 *standards which will require even grater emission reductions in the*
9 *South Coast Air Basin.*

10 (c) *Air pollution emissions from ships and locomotives*
11 *contribute significantly to exceedances of federal and state ozone*
12 *and PM10 standards, and they contribute significantly to*
13 *emissions of toxic air contaminants in the South Coast Air Basin.*

14 (d) *Increased freight train traffic has caused and will continue*
15 *to cause severe traffic congestion and vehicle idling at rail*
16 *crossings in various areas in the South Coast Air Quality*
17 *Management District.*

18 (e) *Vehicle idling contributes to exceedances of state and*
19 *federal ozone and PM10 standards, and creates localized hot spots*
20 *of toxic air contaminants within the South Coast Air Quality*
21 *Management District.*

22 (f) *Emissions from ships, locomotive, and rail-caused vehicle*
23 *idling cause particular impacts in the port areas and the Alameda*
24 *Corridor and Alameda Corridor East.*

25 (g) *Idling can be effectively mitigated or avoided by building*
26 *grade separations and conducting other activities to prevent rail*
27 *traffic from interfering with vehicle traffic or otherwise mitigating*
28 *the air pollution impacts of idlings.*

1 (h) *In order to attain state and federal standards for ozone and*
2 *PM2.5, it is necessary that emissions from ships and locomotives*
3 *be controlled or otherwise mitigated.*

4 (i) *The State of California and local air pollution control and*
5 *air quality management districts are preempted from directly*
6 *controlling emissions from ships and locomotives by subdivision*
7 *(e) of Section 209 of the federal Clean Air Act (42 U.S.C. Sec. 7401*
8 *et seq.), and the federal Ports and Waterways Safety Act (33 U.S.C.*
9 *Sec. 1221 et seq.).*

10 (j) *Emissions from ships and locomotives can be effectively*
11 *mitigated by funding programs to clean up engines or to reduce*
12 *equivalent emissions from other sources which contribute to*
13 *ozone, PM10, PM2.5, or toxic air pollution.*

14 (k) *In order to assure necessary funding for programs to*
15 *mitigate emissions from ships and locomotives, and to mitigate*
16 *pollution impacts at rail crossings, it is necessary to create a*
17 *sustainable, consistent funding mechanism, through fees*
18 *authorized by this act.*

19 (l) *A reasonable fee imposed upon ship and locomotive*
20 *operations is proportionate to the health and environmental harms*
21 *resulting from air pollutant emissions caused by operations within*
22 *the South Coast Air Basin, including vehicle idling at rail*
23 *crossings, and is a fair and appropriate means to mitigate the past,*
24 *present, and future harms to public health and the environment*
25 *resulting from those emissions.*

26 (m) *A mitigation fee will not be necessary if the federal*
27 *Environmental Protection Agency fully adopts regulations*
28 *requiring ships and locomotives, in the aggregate, to meet the fair*
29 *share of emission reductions established pursuant to Section*
30 *40447.8.1 of the Health and Safety Code.*

31 (n) *Motor vehicles, nonroad engines, and nonroad vehicles*
32 *contribute overwhelmingly to ozone, PM10, PM2.5, and toxic*
33 *emissions within the South Coast Air Basin, and in particular to*
34 *impacts in the port areas and the Alameda Corridor and Alameda*
35 *Corridor East. To effectively reduce these impacts it is necessary*
36 *that the South Coast Air Quality Management District be granted*
37 *additional authority to regulate motor vehicles, and that its*
38 *authority to regulate nonroad engines and vehicles be reaffirmed.*

39 SEC. 2. Section 40447.8 is added to the Health and Safety
40 Code, to read:

1 40447.8. (a) Notwithstanding any other provision of law, and
2 to the extent permissible under federal law, the south coast district
3 may adopt regulations requiring any motor vehicle, nonroad
4 engine, and nonroad vehicle that operates substantially in the south
5 coast district, to install retrofit controls to reduce emissions of air
6 contaminants to the maximum extent feasible, as determined by
7 the south coast district.

8 (b) *A regulation adopted pursuant to subdivision (a) that is*
9 *applicable to motor vehicles may not have an implementation date*
10 *that is prior to January 1, 2007.*

11 (c) *The state board shall submit any regulations adopted*
12 *pursuant to this section to the federal Environmental Protection*
13 *Agency for a waiver pursuant to Section 7543 of Title 42 of the*
14 *United States Code if the south coast board makes the findings*
15 *required by that section.*

16 (d) For the purposes of this section, “motor vehicle,”
17 “nonroad engine,” and “nonroad vehicle” have the same
18 meaning as defined in Section 7550 of Title 42 of the United States
19 Code.

20 ~~(e)~~

21 (e) It is the intent of the Legislature that, in adopting regulations
22 pursuant to this section, the south coast district board grant priority
23 to reducing emissions of air contaminants from vehicles and
24 engines that contribute to air pollution problems in areas impacted
25 by the Alameda Corridor and the Alameda Corridor East, as
26 determined by the south coast district.

27 ~~SEC. 2.—~~

28 SEC. 3. *Section 40447.8.1 is added to the Health and Safety*
29 *Code, to read:*

30 40447.8.1. *The south coast district board shall by resolution*
31 *establish fair share emission reduction targets to be met by ships*
32 *and locomotives operating within the south coast district to assist*
33 *in attaining federal one-hour ozone, PM10, 8-hour ozone, and*
34 *PM2.5 standards, and applicable state standards. These targets*
35 *may, but need not, be adopted as part of, or pursuant to, any air*
36 *quality management plan required by state or federal law. For the*
37 *federal one-hour ozone standard and the PM10 standard, the*
38 *targets shall be established by December 31, 2004. Any delay in*
39 *establishing the targets beyond that date shall result in a*

1 *commensurate delay in the authority to adopt mitigation fees as set*
2 *forth in Section 40447.8.2.*

3 *SEC. 4. Section 40447.8.2 is added to the Health and Safety*
4 *Code, to read:*

5 *40447.8.2. (a) On or after January 1, 2006, unless the*
6 *federal Environmental Protection Agency has adopted regulations*
7 *that will fully meet the fair share emission reduction targets*
8 *established pursuant to Section 40447.8.1, the south coast district*
9 *board may adopt by regulation a reasonable mitigation fee and*
10 *impose that fee upon all or any of the following that operate in*
11 *whole or in part within the south coast district after making the*
12 *findings specified in Section 40447.8.3:*

13 *(1) Ports.*

14 *(2) Marine terminals.*

15 *(3) Shipping companies.*

16 *(4) Railroads.*

17 *(b) The fee shall be used exclusively to mitigate the emission*
18 *impacts of the activity or activities for which the fee is imposed,*
19 *including obtaining equivalent emission reductions from other*
20 *sources, and mitigating or avoiding emissions from vehicle idling*
21 *at rail crossings. If the federal Environmental Protection Agency*
22 *has adopted regulations partially meeting the established fair*
23 *share targets, the south coast district board shall duly consider*
24 *those regulations and their effect on emissions in establishing the*
25 *emissions to be mitigated by the fee.*

26 *(d) This section shall remain in effect only until January 1,*
27 *2021, and as of that date is repealed, unless a later enacted statute,*
28 *that is enacted before January 1, 20021, deletes or extends that*
29 *date.*

30 *SEC. 5. Section 40447.8.3 is added to the Health and Safety*
31 *Code, to read:*

32 *40447.8.3. No mitigation fee shall be imposed unless the*
33 *district board has made all of the following findings:*

34 *(a) There is a clear nexus between the activities for which the*
35 *fee is charged and the pollution impacts sought to be mitigated.*

36 *(b) The fee is necessary to mitigate the adverse impacts on*
37 *health and the environment caused by air pollution resulting from*
38 *the activities for which the fee is imposed.*

1 (c) *The fee does not exceed the reasonable costs of mitigating*
2 *the identified air pollution impacts resulting from those*
3 *operations, including vehicle idling at rail crossings.*

4 (d) *The fee is apportioned in a manner which bears a fair and*
5 *reasonable relationship to the air pollution impacts caused by the*
6 *fee-payers' operations.*

7 SEC. 6. *Section 40447.8.4 is added to the Health and Safety*
8 *Code, to read:*

9 40447.8.4. (a) *After holding at least one public hearing and*
10 *prior to expending any funds received pursuant to the fees*
11 *authorized by Section 40447.8.2, the south coast district board*
12 *shall adopt a program of projects for the expenditure of the*
13 *mitigation fees.*

14 (b) *Not more than 5 percent of the annual fee revenues may be*
15 *used for administration of the fee and associated mitigation*
16 *programs, including mitigating or avoiding emissions from*
17 *vehicle idling at rail crossings. This 5 percent limitation does not*
18 *include actual program implementation.*

19 (c) *The program of projects shall include both of the following:*

20 (1) *An identification of proposed expenditures that sets forth*
21 *the expected costs and the quantitative and qualitative emission*
22 *reduction benefits of each proposed program.*

23 (2) *An identification of the cost-effectiveness of each proposed*
24 *project, or in the case of an air toxics emission reductions project*
25 *a quantification of the expected benefit of each project.*

26 (d) *For a period of 12 months after receipt, not less than 20*
27 *percent of the fee revenue for each fiscal year shall be reserved for*
28 *expenditure on mitigation projects that reduce emissions from*
29 *heavy-duty vehicles operated by independent truckers operating*
30 *substantially within the south coast district. For purposes of this*
31 *section, "independent trucker" means a truck operator or*
32 *trucking company who owns or operates no more than ____*
33 *heavy-duty trucks. Operators or companies leasing vehicles from*
34 *a common truck owner may still be considered independent*
35 *truckers if they do not individually own or operate more than ____*
36 *heavy-duty trucks.*

37 (e) *Within 18 months after first adopting a program as specified*
38 *in this section, and by March 31 of each fiscal year thereafter, the*
39 *south coast district shall issue a public report that sets forth the*
40 *following:*

1 (1) *The revenue received as mitigation fees in the prior fiscal*
2 *year.*

3 (2) *The actual costs of the projects funded.*

4 (3) *The results achieved.*

5 (4) *How these results compare with the expected costs and*
6 *benefits.*

7 (5) *Any problems that were encountered in implementing the*
8 *projects.*

9 SEC. 7. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

